IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33773 of 2007(S)

OA.406/2007 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONER:

K.T. SIVANANDAN,
PROGRAMME EXECUTIVE, DOORDARSHAN KENDRA,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.LUIZ GODWIN D'COUTH

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI.

2. **PRASAR BHARATHY/(BROADCASTING CORPORATION OF INDIA), NEW DELHI, REPRESENTED BY THE CHIEF EXECUTIVE OFFICER.**

3. **THE DIRECTOR GENERAL,**
   PRASAR BHARATHY (BROADCASTING CORPORATION OF INDIA), DOORDARSHAN KENDRA, NEW DELHI.

4. **THE DIRECTOR,**
   DOORDARSHAN KENDRA, KUDAPPANAKKUNNU, THIRUVANANTHAPURAM-43.

BY ADV. SRI.ABRAHAM THOMAS, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & K.P.BALACHANDRAN, JJ.

Writ Petition (C) No.33773 of 2007-S

Judgment

Balakrishnan Nair, J.

A Programme Executive of the Doordarshan is the writ petitioner. He challenges Ext.P6 order of the CAT, dismissing his application, in which he challenged his transfer from Thiruvananthapuram to Mumbai.

2. The petitioner joined the Doordarshan as Programme Executive in 1991. He was appointed for the regional language Malayalam for "spoken words and features". According to him, a Programme Executive selected for a particular language, can be transferred, only to a Station, where programmes in that particular language are available. But, by Annexure A4 order dated 03.05.2007, produced along with Ext.P1 OA, he was transferred to Mumbai, where the language is Marathi. According the petitioner, his claim for retention/posting to a place where Malayalam programme is available, is supported by the order of the Apex Court in **SD Sastri v. Union of India and others**. A copy of that order is produced as Annexure A2 to Ext.P1. He also relies on Annexure A3 order of the Principal Bench of the CAT in OA No.2102/03 and RA No.196/04 dated 17.02.2005. The CAT, relying on the

above said order of the Apex Court, held that the Programme Executive should be transferred, posted and allotted work in their particular field. But, ignoring the above judgments, the impugned transfer order has been issued. Though the above said decisions were cited before the CAT, they were distinguished and the OA filed by the petitioner was dismissed. The petitioner also relied on a Judgment of the Division Bench of the CAT, Ernakulam in OA No.453/07. In the said case, the transfer of a Programme Executive called Smt.Meera Rani from Thiruvananthapuram to outside the State was set aside. Though the respondents therein attempted a Writ Petition before this Court, the above said order of the CAT was upheld subject to a modification that the transfer can be to anywhere in the State of Kerala. The said decision was also not followed by the learned Judicial Member, who rendered the impugned Judgment Ext.P6. The petitioner therefore, submits, Ext.P6 is vitiated and therefore, is liable to be set aside.

3. The CAT can interfere with a transfer, if only it is shown to be illegal or vitiated by mala fides. In the present case, the main contention of the petitioner is that the transfer is illegal as it is made to a place outside the State, where there is no Malayalam programme. In view of the aforementioned

decision of the Apex Court and those of the different Benches of the CAT, the petitioner could be transferred only to a place where there are Malayalam programmes. In that sense, the order of transfer is illegal and therefore, the CAT should have interfered with the same. Judicial propriety warrants that the learned Judicial Member should follow the decisions of the Division Bench of the CAT and also the order of the Apex Court, it is submitted.

4. The CAT non-suited the petitioner mainly relying on Ext.R2(a) appointment order of him, which is produced as Ext.P3 in this Writ Petition. The relevant clause relied on by the CAT reads as follows :

> *"vi. The post of Programme Executive in Doordarshan carries all India transfer liability and therefore, you are likely to be posted or transferred anywhere in India. Even though selected by the UPSC against a particular discipline or disciplines, you are liable to be entrusted with any work expected of a Programme Executive in the Organisation of All India Radio/Doordarshan at the discretion of the Head of office/organisation."*

As per the above quoted clause, the petitioner is liable to be posted anywhere in India and he can be allotted any work at the discretion of the Head of the

organisation. The CAT also noticed the fact that the petitioner's initial appointment was at Bangalore, where there is no Malayalam programme. He worked there for four years. In the light of the above condition contained in the appointment order, the CAT distinguished the order of the Apex Court and the decisions of the Tribunal. The learned counsel for the petitioner pointed out that at the time of initial appointment, he had no other option, but to sign at the dotted line. But, once he has joined the service, he is entitled to get the benefit of the order of the Apex Court and also the decisions of the CAT. The learned counsel for the petitioner also referred to Condition No.2(ii) in the last but one page of the appointment order, which is available at page 47 of the paper book. The said condition reads as follows :

> *"The above mentioned candidate has been selected by the UPSC for the post of Programme Executive in the following disciplines and thus his/her service could be utilised for these discipline(s) and also for such other duties, as mentioned in AIR manual/Doordarshan manual."*

In view of the above condition and other decisions, the petitioner should be retained in a place where there are Malayalam programmes, it is submitted.

But, we notice that the above condition will only show that the petitioner is appointed in the discipline of Malayalam spoken words, but his liability to be subjected to all India transfer and to work on other duties, is not diluted by the above clause. We notice that the Apex Court, in the aforementioned order, does not lay down any principle, which binds as a precedent. The said order of the Apex Court reads as follows :

> *"After hearing the petitioner who appeared before us in person and the learned counsel appearing on behalf of the respondents, we direct that the petitioner shall not be transferred to a place where there is no Hindi programme and that the petitioner should also be placed in Hindi Section. The respondent will also consider the case of the petitioner that he should be given co-ordination work according to the seniority. The Writ Petition is disposed of as above. There will be no order as to costs."*

The above order is only an order in favour of a particular person in the facts and circumstances of that case. The same cannot be taken as striking down the conditions concerning all India transfer liability of the petitioner contained in his appointment order. But the Principal Bench of the tribunal misread that

order and issued certain directions in Annexure A3 Judgment attached to Ext.P1. We are of the view that the CAT has, under the impugned order, correctly distinguished that decision. In view of the conditions contained in the petitioner's appointment order, whether he was liable to be transferred outside the State and entrusted with other works than Malayalam programme, was not considered or decided in the said Judgment. Same is the case of the Judgment of the Ernakulam bench in Smt.Meera Rani's case. So, we are of the view that the above decisions will not, in any way support the case of the petitioner. We agree with the reasonings and conclusions of the CAT in Ext.P6. In the result, the Writ Petition fails and it is dismissed. But, the dismissal of the Writ Petition will not affect the rights, if any, of the petitioner to pursue his representation, which is recommended by his superior Officer by Annexure A5.

Sd/-**K.BALAKRISHNAN NAIR,JUDGE**

15.11.2007 Sd/-**K.P.BALACHANDRAN, JUDGE**

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